



1 I, David M. Arbogast, declare as follows:

2 1. I am the attorney of record for Plaintiffs DOLORES MANDRIGUES, JUANITA JONES,  
3 AL F. MINYEN and WILMA R. MINYEN, MARK CLAUSON and CHRISTINA CLAUSON in the  
4 above-entitled action.

5 2. Exhibit 1, attached hereto is a true and correct copy of the Order Re: Discovery, Jordan v.  
6 Paul Financial, LLC, et al., U.S.D.C. (N.D. Cal. June 6, 2008) Case No. C 07-04496 SI;

7 3. Exhibit 2, attached hereto is a true and correct copy of excerpts of the deposition of Jon  
8 Finley, Reyes v. Downey Savings and Loan Assn, F.A., et al. U.S.D.C. (C.D. Cal. April 30, 2008) Case  
9 No. SACV07-0615 AG (CTx);

10 4. Exhibit 3, attached hereto is a true and correct copy of the Further Order Re Plaintiffs'  
11 Motion to Compel Discovery Responses, In re HP Inkjet Printer Litigation, U.S.D.C. (N.D. Cal. April  
12 30, 2008) Case No. C 05-3580 JF (PVTx).

13 I declare under penalty of perjury that the foregoing is true and correct. Executed within the  
14 United States on June 4, 2008.

15 /s/ David M. Arbogast  
16 David M. Arbogast  
17  
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## **Exhibit No. 1**

Case 3:07-cv-04496-SI Document 58 Filed 06/02/2008 Page 1 of 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY M. JORDAN, individually and on  
behalf of all others similarly situated,

No. C 07-04496 SI

**ORDER RE: DISCOVERY**

Plaintiffs,

v.

PAUL FINANCIAL, LLC, et al.,

Defendants.

Plaintiff Gregory Jordan has filed a letter brief asking the Court to compel defendant Paul Financial LLC to produce information and documents requested by plaintiff. Having considered the arguments of the parties and the papers submitted, the Court rules as follows.

Plaintiff's fifth interrogatory seeks the name and contact information of each putative class member to whom defendant sold an adjustable rate mortgage ("ARM") loan during the liability period. Defendant objects to the production of this information because the identities of the putative class members, as well as the information possessed by the class members, is not relevant to the question of class certification. Defendant also objects on the ground that the release of this information would violate the privacy rights of the putative class members. Without reaching the question of class members' privacy rights, the Court agrees with defendant that this discovery request will not assist plaintiff in meeting his burden of establishing that class certification is proper. Class certification raises structural questions about the nature of plaintiff's claim and the number of potential parties affected; information about individual class members will not help in this regard. To the extent plaintiff requires

1 information about the number of borrowers potentially affected by the practices about which plaintiff  
2 complains, the number of borrowers who received loan documents similar to the loan documents  
3 received by plaintiff, and the like, that information must be disclosed. But at this stage of the litigation,  
4 it simply is not necessary for defendant to produce the names and contact information of every putative  
5 class member. The Court therefore DENIES plaintiff's discovery request with regard to Interrogatory  
6 No. 5.

7 Next, plaintiff seeks the identity of all subsequent purchasers and assignees of ARM loans  
8 entered into between defendant and all putative class members. Plaintiff argues that this information  
9 is necessary because these third parties are potential defendants and because it may be necessary to  
10 contact them in order to preserve documents relevant to this litigation. Defendant objects, contending  
11 that this information is not relevant to class certification and is not necessary for the preservation of  
12 documents. Although the Court understands that the subsequent purchasers and assignees of the loans  
13 of every putative class member may well be liable under federal law if the class is certified, the Court  
14 does not find it necessary, at this time, for defendant to produce this information. The Court does not  
15 see how it would be relevant to the question of class certification. In addition, defendant has stated that  
16 all the relevant loan documents are in its possession and that it is preserving the information plaintiff  
17 needs. The Court therefore DENIES plaintiff's request without prejudice to reconsideration if it appears  
18 that (1) defendant does not have all the relevant loan documents in its possession or (2) that defendant  
19 will rely on the circumstances of the subsequent purchases or assignments of defendant's loans in its  
20 opposition to class certification.

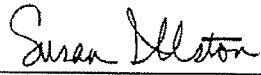
21 Lastly, plaintiff seeks the following documents from defendant: five randomly-selected loan files  
22 for each subsequent purchaser or assignee of the loans at issue; a complete copy of each version of the  
23 loan documents defendant used during the liability period; and a copy of each of the loans defendant  
24 sold during the liability period. Defendant has agreed to provide a complete copy of each version of its  
25 loan documents during the relevant time period, as well as five redacted loan files for borrowers whose  
26 loans were assigned to Luminent Mortgage Capital, the entity that purchased plaintiff's own loan. The  
27 Court finds that this information is sufficient for purposes of class certification, because all plaintiff will  
28 need is a copy of each iteration of defendant's ARM loan documents. The Court does not see how

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1 knowledge of which specific type of document was attached to loans that were later acquired by  
2 particular purchasers or assignees will be relevant to class certification. Accordingly, the Court  
3 DENIES this discovery request.

4  
5 **IT IS SO ORDERED.**

6  
7 Dated: June 2, 2008

  
SUSAN ILLSTON  
United States District Judge

United States District Court  
For the Northern District of California

## **Exhibit No. 2**

JON FINLEY

04/30/08

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
ALFREDO REYES, ANGELICA  
REYES, CLARENCE SELLERS,  
CHRISTINA SELLERS, on  
behalf of themselves and  
others similarly situated,  
Plaintiffs,  
vs. Case No. SACV07-0615AG(CTx)  
DOWNEY SAVINGS AND LOAN  
ASSOCIATION, F.A.; DOWNEY  
FINANCIAL CORPORATION; and  
DOES 1 through 100,  
inclusive,  
Defendants.

DEPOSITION OF JON FINLEY  
San Diego, California  
Wednesday, April 30, 2008

Reported By:  
PATRICIA Y. SCHULER  
RPR, CSR No. 11949  
Job No. 87021

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1 APPEARANCES:  
2 FOR PLAINTIFFS:  
3 KIESEL BOUCHER LARSON  
4 BY: MICHAEL C. EYERLY  
5 8648 Wilshire Boulevard  
6 Beverly Hills, California 90211  
7 (310) 854-4444  
8 - and -  
9 ARBOGAST & BERNS LLP  
10 BY: DAVID ARBOGAST  
11 19510 Ventura Boulevard, Suite 200  
12 Tarzana, California 91356  
13 (818) 961-2000  
14 FOR DEFENDANTS:  
15 HODEL BRIGGS WINTER  
16 BY: MICHAEL S. LEBOFF  
17 8105 Irvine Center Drive, Suite 1400  
18 Irvine, California 92618  
19 (949) 450-4435  
20 FOR THE WITNESS:  
21 ALLEN MATKINS LECK GAMBLE & MALLORY LLP  
22 By: MATTHEW J. MARINO  
23 501 West Broadway, 15th Floor  
24 San Diego, California 92101-3541  
25 (619) 233-1155

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1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 ALFREDO REYES, ANGELICA  
4 REYES, CLARENCE SELLERS,  
5 CHRISTINA SELLERS, on  
6 behalf of themselves and  
7 others similarly situated,  
8 Plaintiffs,  
9 vs. Case No. SACV07-0615AG(CTx)  
10 DOWNEY SAVINGS AND LOAN  
11 ASSOCIATION, F.A.; DOWNEY  
12 FINANCIAL CORPORATION; and  
13 DOES 1 through 100,  
14 inclusive,  
15 Defendants.

16 Deposition of JON FINLEY, taken on behalf of the  
17 Defendants at 402 West Broadway, Suite 500, San Diego,  
18 California, beginning at 10:01 a.m. and ending at  
19 12:03 p.m., on April 30, 2008, before PATRICIA Y.  
20 SCHULER, Certified Shorthand Reporter No. 11949.

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1 (Pages 1 to 4)



JON FINLEY

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<p>1 San Diego, California, April 30, 2008</p> <p>2 10:01 a.m. - 12:03 p.m.</p> <p>3</p> <p>4 JON FINLEY,</p> <p>5 having been administered an oath, was examined and</p> <p>6 testified as follows:</p> <p>7</p> <p>8 EXAMINATION</p> <p>9 BY MR. LEBOFF:</p> <p>10 Q. Would you please state your full name and</p> <p>11 spell it for the record, please.</p> <p>12 A. It's Jon Finley; J-o-n, F-i-n-l-e-y.</p> <p>13 Q. You understand the oath you just took is the</p> <p>14 same oath you would take in a court of law. You have</p> <p>15 an obligation to answer my questions truthfully today?</p> <p>16 A. Yes.</p> <p>17 Q. Did you work at a company called Homefield</p> <p>18 Financial in 2004?</p> <p>19 A. Yes.</p> <p>20 Q. I would like to just show you what was</p> <p>21 marked previously as Exhibit 2.</p> <p>22 MR. MARINO: Mr. LeBoff, may I ask Exhibit 2</p> <p>23 to what, this deposition or another deposition?</p> <p>24 MR. LEBOFF: It is Exhibit 2 to the</p> <p>25 plaintiff's deposition, Christina Sellers, in this</p> <p style="text-align: right;">Page 5</p>	<p>1 remember all the -- every conversation I had with her.</p> <p>2 It was an incoming call center. We talked all day on</p> <p>3 the phone.</p> <p>4 Q. Fair enough. Well, let me ask you this. Do</p> <p>5 you remember anything specifically about the Sellers'</p> <p>6 loan?</p> <p>7 A. I remember her only that she -- we had many</p> <p>8 conversations, because she called me quite a bit,</p> <p>9 just -- and I answered all of her questions.</p> <p>10 But, I mean, I don't know exactly what -- I</p> <p>11 could not quote what we said, but it was just she had</p> <p>12 a lot of questions. I answered them. That was that.</p> <p>13 Q. Do you remember what her questions were</p> <p>14 about?</p> <p>15 A. Just, you know, your standard questions when</p> <p>16 you are doing a loan; what are my fees, you know,</p> <p>17 things like that. But I don't remember a specific</p> <p>18 question that she asked.</p> <p>19 Q. Do you remember if she ever asked any --</p> <p>20 well, let me back up. Do you recall whether the loan</p> <p>21 that is referred to in Exhibit 2, whether it was an</p> <p>22 option ARM loan?</p> <p>23 A. It was an option ARM loan.</p> <p>24 Q. Do you remember whether Ms. Sellers asked</p> <p>25 you any questions about how option ARM loans work?</p> <p style="text-align: right;">Page 7</p>
<p>1 case.</p> <p>2 MR. MARINO: Thank you.</p> <p>3 BY MR. LEBOFF:</p> <p>4 Q. Just before I ask you questions about that,</p> <p>5 I just want to confirm you are represented by counsel,</p> <p>6 Mr. Marino?</p> <p>7 A. Yes.</p> <p>8 Q. Have you ever seen document Exhibit 2</p> <p>9 before?</p> <p>10 A. Yes.</p> <p>11 Q. At the bottom where it says, "Jon Finley" --</p> <p>12</p> <p>13 A. Yes.</p> <p>14 Q. -- that is you?</p> <p>15 A. Yes.</p> <p>16 Q. See the name on top, "Christina Sellers"?</p> <p>17 A. I see it, yes.</p> <p>18 Q. Do you remember, did you do a loan for</p> <p>19 Ms. Sellers?</p> <p>20 A. I did.</p> <p>21 Q. Do you remember that loan or those</p> <p>22 borrowers?</p> <p>23 A. You know, we closed a lot of loans. I don't</p> <p>24 remember any of -- like, as far as like a detailed</p> <p>25 recollection. I do remember the name. But I don't</p> <p style="text-align: right;">Page 6</p>	<p>1 A. I don't remember her specifically. I know</p> <p>2 that everyone -- I mean, everyone asks when we are</p> <p>3 doing a loan, like, well, you know, what do you have</p> <p>4 and just -- I don't know anyone that doesn't ask that,</p> <p>5 what they are getting into. But we answer all the</p> <p>6 questions truthfully and honestly and explain the loan</p> <p>7 the same way every time.</p> <p>8 Q. Well, let me ask you specifically. Did you</p> <p>9 ever lie to Ms. Sellers about her loan terms?</p> <p>10 A. No.</p> <p>11 Q. Do you recall if you discussed with</p> <p>12 Ms. Sellers the possibility of negative amortization</p> <p>13 on her loan?</p> <p>14 A. Specifically her, no. But we explained</p> <p>15 deferred interest to everyone we put in the loan.</p> <p>16 Q. You explain it the same way to every</p> <p>17 borrower?</p> <p>18 A. Correct.</p> <p>19 Q. What do you tell them about the possibility</p> <p>20 of negative amortization on an option ARM loan?</p> <p>21 A. Well, we tell them that "We have you</p> <p>22 approved" -- well, first we take their application.</p> <p>23 Then we see what makes most sense for them depending</p> <p>24 on what they are trying to accomplish.</p> <p>25 Then when we call them back, you know,</p> <p style="text-align: right;">Page 8</p>

JON FINLEY

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1 A. Yes.  
 2 Q. Did that criteria have a specific title?  
 3 A. No. I think we just go to "product  
 4 guidelines." I don't think it was -- it was pretty  
 5 straightforward.  
 6 Q. What about for the other lenders? You  
 7 mentioned Indymac, Countrywide, First Franklin, and  
 8 then Homefield itself.  
 9 They also had criteria lending guidelines  
 10 for their option ARM loans?  
 11 A. Yes.  
 12 Q. Generally, did those lenders' loan  
 13 application guidelines or criteria, did they change  
 14 very much while you were there?  
 15 A. Guidelines do change. Yeah -- and I don't  
 16 know what the definition of "very much" is. Minimum  
 17 credit scores would change. Things like sometimes  
 18 they would allow 30-day lates for a certain period of  
 19 time. I don't know if those are major changes, but,  
 20 yeah, they would change the requirements to get the  
 21 approvals.  
 22 Q. Who had the loosest guidelines, generally  
 23 speaking, while you were there?  
 24 A. Generally speaking, World Savings had the  
 25 loosest guidelines.

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1 Q. I'm sorry, one more time.  
 2 A. It would have been World Savings.  
 3 Q. Did World Savings have an option ARM loan  
 4 while you were working there at Homefield?  
 5 A. They did.  
 6 Q. Where did Downey rank as far as criteria?  
 7 A. In my recollection, they would have been the  
 8 next level as far as -- I don't know if the word is  
 9 "loosest guidelines," but guidelines that they fit  
 10 someone with different issues. It depended. I  
 11 believe they required you to have -- I mean, it  
 12 depended on the equity and things like that. But I  
 13 believe they went to a lower credit score. I think  
 14 they went to lower credit score than the other banks.  
 15 Q. When I said "loosest," I mean, you know,  
 16 they had the more relaxed were or easier for folks to  
 17 get loans --  
 18 A. Correct.  
 19 Q. -- under their guidelines than the other  
 20 lenders?  
 21 A. Correct. They had looser guidelines than  
 22 most of them.  
 23 Q. Back on your training -- and by "your  
 24 training," yours and the other sales folks that were  
 25 at Homefield.

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1 You mentioned earlier that you received not  
 2 only training when you started, but you received  
 3 training during your entire stay there as a  
 4 salesperson, right?  
 5 A. Yes.  
 6 Q. Every day was there at least some training  
 7 aspect?  
 8 A. Yes. It was a daily -- especially when we  
 9 had the application. I would work them up with the  
 10 manager, and we would go over the way to present it  
 11 and the way to explain it and the way to handle the  
 12 questions we were probably going to be asked. Really,  
 13 just to gear us up.  
 14 We were a sales force. So you are expected  
 15 to sell it and present it in a way to where we  
 16 emphasized the positives of it, and we can answer the  
 17 questions that I am sure that the customer was going  
 18 to have.  
 19 Q. Was it kind of a morning briefing kind of  
 20 sales training session?  
 21 A. I would say yes. But it was on an  
 22 individual basis. There was a team of 10 on my  
 23 particular team. He would pull us in throughout  
 24 the -- mine was in the morning. And sometimes he  
 25 would get busy with some other agents. It wouldn't be

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1 until the afternoon.  
 2 Q. Was the sales force over at Homefield, was  
 3 it divided up into teams?  
 4 A. Yes.  
 5 Q. How many folks were on a team?  
 6 A. On average 10. But it did vary depending on  
 7 how many the manager had hired.  
 8 Q. Who was ultimately in charge of the training  
 9 of the sales staff?  
 10 A. There was the corporate trainer. But,  
 11 again, it was a very intimate relationship. It was a  
 12 hands-on relationship with the manager and the sales  
 13 force. It was looking at deals. He knew what was  
 14 going on with every file.  
 15 He could listen in to our calls and hear us  
 16 after we had just talked. They recorded calls. We  
 17 were well aware of what we needed to do and how to  
 18 answer questions. You had to do it right, or you got  
 19 fired there.  
 20 Q. Did teams receive training together?  
 21 A. On the corporate training side, it would  
 22 have been together. It would have been the whole team  
 23 in there for roughly an hour once a week.  
 24 Q. Let's talk about that. You mentioned the  
 25 corporate trainer now a couple of times.

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15 (Pages 57 to 60)

JON FINLEY

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1 criteria, and we talked a little bit about Downey  
2 being next up.

3 What was the difference? What made World --  
4 the criteria for an option ARM loan through World,  
5 what made that looser or easier for borrowers?

6 A. World Savings did not have the credit score  
7 requirement. They were a portfolio lender. So if it  
8 made sense, they would still do it. Even though they  
9 may not meet a credit score requirement, if there was,  
10 you know, a lot of equity in the property, person has  
11 been on their job for a long time, they would look at  
12 that and still grant the loan versus many other  
13 lenders that had a rigid box of guidelines for that  
14 day. If it didn't fit, they probably could not go  
15 there.

16 Q. Did you receive training specifically to  
17 World option ARM loans as opposed to Downey option ARM  
18 loans?

19 A. There was a World account representative  
20 that came by once a week and she would, you know, help  
21 us, you know, with the things. But we would go to  
22 them if we couldn't get it approved anywhere else. It  
23 was usually a call, "This is what I have, do you think  
24 you can do this loan," and they would tell us.

25 Q. And World actually had an account

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1 criteria was loose, did you sell more of their  
2 products than the other products?

3 A. No, very few. Because it took a long time  
4 to close with them. Again, I am marketing -- the  
5 people that called us usually did qualify based on how  
6 they, I guess, would buy the information.

7 But most people just didn't -- we didn't  
8 have to go there. So we didn't. But I closed a few  
9 there as well.

10 Q. If World didn't have a credit score  
11 criteria, did they have other -- did this  
12 representative or somebody give you other written  
13 criteria or considerations that World looked at  
14 whether or not -- in determining whether or not they  
15 would approve an option ARM loan?

16 A. With World Savings they were worried about  
17 the equity in the property. They would send out their  
18 own appraiser as well as our appraiser, and usually  
19 their appraisals were very, very low. They were very  
20 conservative because of two reasons; you had to pay --  
21 somebody had to pay for that appraisal, and also it  
22 was time consuming for the process.

23 Q. Okay. I think you may have answered this,  
24 and I apologize if I have asked you. You worked for  
25 several other companies; Ditech, Advantix, after

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1 representative come to your guys' office on a weekly  
2 basis?

3 A. Correct.

4 Q. Do you know what her name was?

5 A. Her name -- I don't remember.

6 Q. Downey didn't have that same arrangement,  
7 though. They didn't send around a customer  
8 representative to your office?

9 A. They very well may have. I did not usually  
10 engage with the account reps coming in. Most things  
11 could be handled over the phone or faxed. It was a  
12 much quicker way to get answers.

13 Q. All the other lenders that you sold option  
14 loan products for, they all had credit score criteria  
15 except for World?

16 A. Correct.

17 Q. Do you sell World option ARM loans  
18 currently?

19 A. I can. I have not done one for a while.

20 Q. What about the Downey option ARM loan, do  
21 you currently sell those?

22 A. I do not. Because I am not approved with  
23 Downey.

24 Q. The World Savings option ARM loans while you  
25 worked at Homefield back in 2004, because their

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1 Homefield. You did not sell Downey option ARM loan  
2 products when you were at Ditech or Advantix; is that  
3 right?

4 A. Ditech was just GMAC. Advantix, I don't  
5 believe we were approved with them.

6 Q. When you were at Advantix, did you sell  
7 World Savings option ARM loans?

8 A. I did.

9 Q. You did?

10 A. Yes.

11 Q. Did you sell a lot of those?

12 A. Not a lot, a couple.

13 Q. Did they have the same lending criteria when  
14 you worked for Advantix as they did up in Homefield?

15 A. No. They now have credit score  
16 requirements, and it was tough to go there versus when  
17 I was at Homefield.

18 Q. So it would have been in 2006 when you  
19 worked for Advantix, World had initiated a policy of  
20 setting credit scores and made it tougher to get a  
21 loan through them?

22 A. Correct. Again, I only would look at it on  
23 an individual basis. I have my specific situation. I  
24 would see where I could go with it. So since the  
25 guidelines do change, there is no reason to memorize

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22 (Pages 85 to 88)

**JON FINLEY**

**04/30/08**

1 retain the original and make it available upon  
2 reasonable request.  
3 If for any reason we do not provide a signed  
4 copy to counsel, a certified copy of the transcript  
5 can be used for all purposes. We will further  
6 stipulate to relieve the court reporter of her duties.  
7 Anything further.  
8 MR. LEBOFF: So stipulated.  
9 MR. EYERLY: Thank you very much.  
10 (The deposition of JON FINLEY concluded at  
11 12:03 p.m.)

1  
2  
3 I, the undersigned, a Certified Shorthand  
4 Reporter of the State of California, do hereby  
5 certify:  
6 That the foregoing proceedings were taken  
7 before me at the time and place herein set forth; that  
8 any witnesses in the foregoing proceedings, prior to  
9 testifying, were duly sworn; that a verbatim record of  
10 the proceedings was made by me using machine shorthand  
11 which was thereafter transcribed under my direction;  
12 that the foregoing transcript is a true record of the  
13 testimony given.  
14 Further, that if the foregoing pertains to  
15 the original transcript of a deposition in a Federal  
16 Case, before completion of the proceedings, review of  
17 the transcript [ ] was [ ] was not requested.  
18 I further certify I am neither financially  
19 interested in the action nor a relative or employee of  
20 any attorney of party to this action.  
21 IN WITNESS WHEREOF, I have this date  
22 subscribed my name.  
23 Dated:

25 PATRICIA Y. SCHULER, RPR  
CSR NO. 11949

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2  
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8  
9 I, JON FINLEY, do hereby declare under the penalty of  
10 perjury that I have read the foregoing transcript;  
11 that I have made any corrections as appear noted, in  
12 ink, initialed by me, or attached hereto; that my  
13 testimony as contained herein, as corrected, is true  
14 and correct.  
15 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
16 20\_\_\_\_, at \_\_\_\_\_,  
17 (City) (State)  
18  
19  
20  
21 \_\_\_\_\_  
JON FINLEY

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### **Exhibit No. 3**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re: HP INKJET PRINTER  
LITIGATION,

Case No.: C 05-3580 JF (PVT)

**FURTHER ORDER RE PLAINTIFFS'  
MOTION TO COMPEL DISCOVERY  
RESPONSES**

This Document Relates to:

All Actions

On April 29, 2008 the parties appeared before Magistrate Judge Patricia V. Trumbull for further hearing on Plaintiffs' motion to compel discovery responses.<sup>1</sup> Based on all of the briefs, arguments and other materials submitted by the parties, and the file herein,

IT IS HEREBY ORDERED that Plaintiffs' motion is GRANTED IN PART and DEFERRED IN PART. Plaintiffs' motion is granted with regard to the contact information for the customers who made the complaints reflected in the 169<sup>2</sup> identified customer complaint entries (the "Complaining

<sup>1</sup> The parties first appeared for hearing on this motion on February 19, 2008. After that hearing, the court continued the hearing to April 15, 2008, to allow for further meet and confer, and for the parties to take certain actions agreed upon at the hearing. The court also set a deadline for the parties to file a joint statement regarding the status of the discovery dispute. The parties filed their joint statement on April 4, 2008. Based on the parties' joint statement, the court further continued the hearing to April 29, 2008 and ordered Plaintiffs to file copies of the 179 complaint entries for which they are requesting contact information, along with a copy of their draft privacy notice. Plaintiffs submitted the complaint entries and their draft privacy notice along with copies of various California cases on which they based the wording of their draft privacy notice. In response, Defendant filed a request to submit its proposed form of privacy notice. A couple of days later it filed copies of various California cases that deal with privacy issues in discovery.

<sup>2</sup> Plaintiffs had identified 179 complaint entries in Exhibit A to the April 18, 2008 letter from their counsel to the court (Docket No. 158). At the hearing Plaintiffs agreed to omit Entry Nos. 54, 60, 82, 90, 97, 99, 107, 136, 138 and 157 from the list, leaving 169 entries at issue at this time.



1 Customers"). Before providing the contact information, Defendant shall send to the Complaining  
2 Customers a privacy notice in the form of privacy notice proposed by Plaintiff as modified by the  
3 parties on the record at the hearing.<sup>3</sup> Defendant shall send out those notices no later than May 13,  
4 2008. No later than June 3, 2008, Defendant shall produce to Plaintiffs the contact information for  
5 each of the Complaining Customers, except those who have returned the Refusal of Consent to be  
6 Contacted.

7 The information sought is relevant to Plaintiffs' claims. Defendant has not specified any of  
8 the 169 identified customer complaints that do not relate to HP printer ink levels and/or ink level  
9 messages. Instead, it argues that it is not clear from some of the customer complaints whether the  
10 complaint is relevant to Plaintiffs' claims, implying that to be relevant the customer must have  
11 claims similar to Plaintiffs' claims. However, a customer complaint need not include all of the  
12 elements of Plaintiffs' legal claims in order to be relevant to those claims. From the court's review  
13 of a significant sample of the 169 identified customer complaint entries, it appears the Complaining  
14 Customers may well have knowledge that is relevant to Plaintiffs' claims.

15 The privacy rights of Defendant's customers do not preclude this discovery. Where federal  
16 jurisdiction is founded on the diversity of the parties pursuant to the Class Action Fairness Act, state  
17 privilege law applies to discovery dispute. *See Martin v. Lafon Nursing Facility of the Holy Family,*  
18 *Inc.*, 244 F.R.D. 352, 355-56 (E.D. La. 2007). Under California law, the right to privacy is set forth  
19 in Article I, Section I of the California Constitution. It is not an absolute right, but a right subject to  
20 invasion depending on the circumstances. *See Hill v. National Collegiate Athletic Ass'n*, 7 Cal.4th 1,  
21 37 (1994).

22 In a case directly on point, the California Supreme Court last year held that an opt-out notice  
23 for pre-certification discovery of potential class members' identity and contact information was  
24 appropriate in a putative class action suit involving allegedly defective DVD players. *See Pioneer*  
25 *Electronics (USA), Inc. v. Superior Court*, 40 Cal.4th 360 (2007). Defendant's attempt to distinguish  
26

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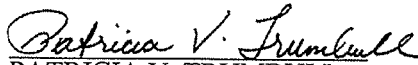
27 <sup>3</sup> At the hearing the parties agreed that the form of privacy notice proposed by Plaintiffs  
28 would be modified to include the following portions of Defendant's proposed form of privacy notice:  
1) the second sentence of the first paragraph; and 2) all of the third paragraph. The parties also agreed  
that the response deadline stated in the notice will be May 31, 2008.

1 *Pioneer* on the grounds that many of the Complaining Customers here are not likely to be potential  
2 class members is unpersuasive. The *Pioneer* court did not base its decision on the fact the  
3 individuals to be contacted were potential class members, but rather on its determination that:  
4 1) individuals who contact a company to complain about a product have a reduced expectation of  
5 privacy in the contact information they supply to the company; and 2) disclosure of those  
6 individuals' identities and contact information to the named plaintiff in a putative class action, after  
7 notice to those individuals and opportunity to object, was not a serious invasion of their privacy.  
8 The court noted that these factors alone could end the inquiry. However, the court went on to  
9 evaluate the trial court's balancing of the competing interests. In doing so, the court expressly noted  
10 that "'the identity and location of persons having (discoverable) knowledge' are proper subjects of  
11 civil discovery. [citations omitted.] In a real sense, many of Pioneer's complaining customers would  
12 be *percipient witnesses* to relevant defects in the DVD players." *Ibid.* at 374. In light of this recent  
13 controlling California Supreme Court case authority, the older appellate and district court cases cited  
14 by Defendant are inapposite.

15 IT IS FURTHER ORDERED that the remainder of Plaintiff's motion is DEFERRED until  
16 after Judge Fogel rules on Plaintiff's motion for class certification. Within 5 court days after Judge  
17 Fogel enters his ruling on that motion, the parties shall meet and confer regarding the scope of their  
18 remaining dispute regarding the subject discovery. If the parties cannot resolve their remaining  
19 disputes over the subject discovery, Plaintiffs may file a renewed motion to compel on two weeks'  
20 notice, setting forth their position regarding the parties' remaining disputes. Defendant shall file its  
21 opposition no later than one week before the hearing. No reply shall be filed absent further order of  
22 the court.

23 IT IS FURTHER ORDERED that, in the event District Judge Fogel issues an order denying  
24 Plaintiffs' motion for class certification, the portion of this order granting in part Plaintiffs' motion  
25 to compel shall be deemed stayed.

26 Dated: 4/30/08

27   
28 PATRICIA V. TRUMBULL  
United States Magistrate Judge